Cruz, Francisco

From:
Sent: Wednesday, October 29, 2014 12:20 PM
To: Trulear, Brian
Cc: Cruz, Francisco
Subject: Background info for Fri phone call
Attachments: 2014 10 29 for EPA discussion.pdf

Mr. Trulear,

I appreciate the opportunity to talk with you on Friday. I took some time to write up what I wanted to talk about, thinking it might lead to a more productive discussion (please see attached document). I hope you'll be able to look at this information prior to the phone call.
Thank you,

March 29, 2014

Background Information

Ten years ago, I moved to an area of Wise County VA that has been heavily impacted by surface mining. Part of my property was under two different permits, which have since been released. There is still an active operation upslope from my house. I have been very frustrated with the lack of proper oversight and enforcement by both DMLR and OSM, especially in regards to protection of water quality.

I have participated in the TMDL development process (TDS and TSS) for my watershed, which started in 2007. I have learned a great deal about TMDLs and NPDES permitting since that time and have had several conversations with EPA TMDL staff, beginning in 2011. I have also spoken with Mr. Cruz on a couple occasions about my concerns with NPDES permit issues. Overall, EPA staff has been receptive to the concerns I have expressed but I have also been frustrated by lack of response to requests for information or simple inquiries.

A couple years ago, EPA TMDL staff sent me a copy of "Central Tenets of the National Pollution Discharge Elimination System (NPDES) Permitting Program." When these tenets are considered when reviewing DMLR issued NPDES permits, it is obvious DMLR is not properly implementing the NPDES program. It appears the VA coal industry is being allowed to operate under its own set of rules. In almost every conversation I have had with EPA staff, where examples of this more lenient standard have been discussed, I am told "EPA is working with Virginia." I know EPA is well aware of most of the shortcomings of DMLR issued NPDES permits, especially those in TMDL watersheds. Could you explain why the EPA doesn't require DMLR implement changes in their NDPES program so that permits are consistent with the central tenets of the NPDES program?

For example, EPA TMDL staff have definitively stated in past discussions that WLAs would/should be included as enforceable effluent permit limits. This seems like a straightforward standard that DMLR should be implementing. Why isn't EPA requiring this?

There are other specific issues, of which EPA may be unaware. I wanted to bring these issues to your attention and hope you can provide some feedback on Friday. In addition, I am concerned EPA is backpedaling on the issue of TSS Alternate Effluent Limits in TMDL watersheds and would like clarification on this.

Deletion of NPDES outfalls with "problem" discharges in a TMDL watershed

South Fork of the Pound River, which fronts my property, has a benthic impairment, and EPA approved Phase I TSS and TDS TMDLs in April 2011. A mining permit (PN 1101401) adjacent to my property had been vastly exceeding the TMDL assigned TDS Wasteload Allocation:

TMDL TDS Annual Wasteload Allocation: 558,431 kg
TDS Actual Annual Wasteload (calculated 4th quarter 2013): 4,885,383 kg

The CSMO/NPDES permit term for PN1101401 expired almost 3 years ago. When I asked a year ago about why it had not been renewed, DMLR staff said they would look into it. As far as I know, a permit renewal has not been drafted.

During the past year, DMLR approved removal of the ponds and deletion of the NPDES outfalls responsible for most, if not all, of this permit's TDS wasteload.

The ponds removed were all located at the bottom of hollow fills and the discharges had very high conductivity:

	2013 Average Flow (gpm)	2013 Average Conductivity
MPID 3470286	30	1510
MPID 3470287	477	1983
MPID 3470288	69	2259
MPID 3470291	115	1910

These outfalls had continuous base flows because of underdrain flow contributions. Because I have been there, I know at least one pond removal area now has channelized flow from two underdrains. And there is no reason to think the underdrains in the other pond areas stopped discharging after pond removal.

I was told by DMLR that there are no requirements for public notification/review or permit revision when ponds are removed and NPDES outfalls are deleted. Approval for pond removal is left up to the DMLR inspector, who is supposed to ensure there are not problems with water quality of the pond discharges. The extremely high conductivity/TDS of the deleted outfalls should have certainly been considered a water quality problem given that TDS is a stressor of the receiving stream.

Pond removal/deletion of NPDES outfalls appears to be a (duplicitous) means to address TMDL issues. I am aware of this practice on PN 1101401 because it is "in my backyard" and I have been involved in a citizen complaint process, focused on adverse water quality impacts on this permit, for the last 3 years. I think it is unlikely that this pond removal practice would be limited to the single mining permit with which I am most familiar.

DMLR's approval of pond removal, and the deletion of associated NPDES outfalls, absolves the mining company of responsibility for the water pollution they are still causing (see underdrain discharges below).

Underdrain discharges

Underdrain discharges typically flow into sediment ponds with NPDES outfalls. After those ponds are removed and the associated NPDES points deleted, the pollutant loads from the underdrain discharges are no longer included in the NPDES monitoring.

A sediment pond on my property was removed in 2005 and the permit was released. The underdrain that went into this pond had very high conductivity (2100). Even though DMLR concluded this high conductivity was a contributing cause of the lack of benthic life downstream, this was not a factor in bond release. This underdrain is still discharging and still has very high conductivity (1800). An underdrain discharge, on a still active upslope permit, also contributed flow to this pond. According to the company's monitoring data (DMR), the average conductivity for this underdrain in 2013 was 2821 and it has continuous flow. This underdrain discharge is not included in the NPDES permit even though it is a point source of pollution (TDS a TMDL stressor).

Ponds recently removed on PN 1101401 (discussed above) and PN 1101760 (discussed below) captured flow from underdrain discharges. These operations now have several unpermitted point sources of pollution and the TDS and/or selenium loads are no longer captured in the NPDES monitoring data.

I have discussed this issue with both DMLR and OSM and pond removal was actively occurring during a DMLR/OSM/citizen inspection on PN 1101401 earlier this year. Both DMLR and local OSM have the opinion that underdrain discharges do not need to be included in the NPDES permit, if the above fills have been vegetated for at least two growing seasons.

The underdrain discharges are point sources of pollutants. The CWA and the NPDES program require permits for point sources of pollutants. Therefore, a NPDES permit is required for the underdrain discharges. Is this correct? I imagine there are many unpermitted underdrain discharges, both on still active and released mine permits. These underdrains are one of, if not the, primary sources of TDS. DMLR's failure to include underdrains in the NPDES permits is a blatant failure to properly administer the NPDES program.

Moving NPDES outfalls

PN 1101760 recently submitted an application to "update drainage plan and SWH map to show current conditions of the existing and proposed sediment ponds."

Four ponds have been removed and the NPDES outfall numbers associated with these ponds were assigned to other pond's discharges. In the draft NPDES permit published earlier this year, two of the moved outfalls had requirements for selenium monitoring and a compliance schedule for selenium. In addition, DMLR determined those two outfalls to have "reasonable potential to contravene the applicable narrative water quality standards with respect to TDS." The outfalls are now assigned to ponds above the hollow fills. By moving the outfalls to these other ponds, the monitoring data will most likely indicate

compliance with the NPDES permit, even though the source of pollutant loads, originally addressed in the permit, will no longer be included.

I talked to DMLR staff about this "moving" of outfalls, and in general, DMLR is not opposed to moving outfalls. I think outfalls should be location specific. It makes no sense, from a monitoring/data collection standpoint, to assign outfall numbers to a different discharge.

The four outfalls that were moved had continuous flow; two were located in stream and three of the four were located at the bottom of hollow fills. The continuous flow of these discharges indicates that flow was not dependent on precipitation. I assume the underdrains contributing flow to these ponds are still discharging and still contributing selenium and TDS loads. These underdrain discharges should now be added and monitored as NPDES outfalls. Is this correct?

TSS Alternate Effluent Limitations in TMDL watersheds

EPA stated in the Phase I coalfield TMDL Decision Rationales that WLAs preclude the use of TSS AELs in TMDL watersheds:

> *"The water quality-based WLAs in this TMDL preclude the applicability of the alternative precipitation provisions of 40 CFR Part 434".*

And I was initially told by DMLR (2012) that TSS AELs would not be included when permits were renewed or when new permits were issued in TMDL watersheds.

During a 2013 TMDL public meeting DMLR then stated TSS AELs would still be included in permit renewals but would not be included in new permits. This was stated again, in the 2014 DEQ/DMME TMDL Response to Comments Document:

> "But for new mining operations, DMLR intends to issue permits without the alternative precipitation limits for solids. Coal mining permittees can design and construct sediment control with that limitation in mind. For existing facilities, DMLR intends to re-new the alternate precipitation limit when permits are modified or reissued."

A recently published draft permit (1007029), for a new 1000 acre mine in the Levisa Fork watershed (with an EPA approved TSS TMDL), includes TSS AELs. Mr. Cruz has indicated that EPA worked with VA on appropriate permit language relevant to this issue. Is EPA now planning to approve the use of AELs for WQBELs?